

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Application of)	
)	
Lancaster Broadcasters, Inc.)	NAL/Acct. No. MB-201541410028
)	FRN: 0007713209
For Renewal of License for)	
Station DWKYY(AM))	Facility ID No. 36476
Lancaster, Kentucky)	File No. BR-20120910ACY

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: July 7, 2015**Released: July 7, 2015**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau ("Bureau") has before it the application of Lancaster Broadcasters, Inc. ("Licensee") for renewal of license ("Application") for DWKYY(AM), Lancaster, Kentucky ("Station"). In this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture ("*NAL*"),¹ we find that Licensee apparently willfully violated Section 73.3539 of the Rules² by failing to file a timely license renewal application for the Station, and apparently willfully and repeatedly violating Section 301 of the Act, by continuing Station operations after its license had expired. Based upon our review of the facts and circumstances before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."³ An application for renewal of the Station's license should have been filed by April 1, 2012, four months prior to the Station's August 1, 2012, license expiration date.⁴ Licensee failed to timely file the Station's license renewal application. Accordingly, on August 27, 2012, the staff wrote to Licensee stating that the Station's license had expired and that: (1) all authority to operate the Station was terminated; and (2) the Station's call letters were deleted from the Commission's database. The Licensee was advised that further operation of the Station was unauthorized and must cease immediately.⁵ Upon receipt of the License Expiration Letter, on September 10, 2012,

¹ This *NAL* is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended ("Act"), and Section 1.80 of the Commission's rules ("Rules"). See 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80. The Bureau has delegated authority to issue the *NAL* under Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

² See 47 C.F.R. § 73.3539(a).

³ *Id.*

⁴ See 47 C.F.R. §§ 73.1020, 73.3539(a).

⁵ *Letter to Lancaster Broadcasters, Inc. from Peter H. Doyle, Chief, Audio Division, Media Bureau* (Aug. 27, 2010) ("*License Expiration Letter*").

Licensee filed the Application.⁶ The following day, Licensee filed a request for special temporary authorization (“STA”) to continue Station operations and a petition for reconsideration requesting that the staff review its decision to delete the Station’s call sign and terminate the Station’s operating authority.⁷ The staff granted the STA request on September 14, 2012.⁸ In the STA Request, Licensee indicated that, “as a result of the very poor economy,” it lacked the funds to prepare and file a timely renewal application for the Station.⁹

III. DISCUSSION

3. *Proposed Forfeiture.* In this case, the record shows that the Licensee has failed to file a timely license renewal application for Station DWKYY(AM), as required by Section 73.3539(a) of the Rules. Moreover, the licensee continued Station operations for more than one month after its license had expired on August 1, 2012, before filing the appropriate renewal application and seeking STA to so operate, in violation of Section 301 of the Act. Licensees are obligated to comply fully with the Rules, including filing a timely renewal application and maintaining in effect the station’s authorization.¹⁰ Here, Licensee did not do so.

4. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have failed willfully or repeatedly to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹¹ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹² The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹³ and the Commission has so interpreted the term in the Section 503(b) context.¹⁴ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹⁵

⁶ In response to Section III, Item 3 of the license renewal application form, Licensee explained that it had been unable to submit the 2011 Biennial Ownership Report (FCC Form 323) at the appropriate time because it had not obtained documentary information on the death of majority owner of Licensee. Application at Exhibits 9 and 12. In the amended Application, filed March 13, 2013, Licensee states that it had filed the ownership report and the Station’s public file “now contains the most recent ownership report.” See Application, as amended, at Exhibit 12 and FCC Form No. BOA-20130313AAX. See also BOS-20150618AAF and BTC-20150413AAX (seeking transfer of control of deceased majority shareholder’s ownership portion of Licensee), granted on June 17, 2015.

⁷ See File No. BLSTA-20120911AAY (“STA Request”).

⁸ See *Letter to Jerrold R. Miller, Esq.*, Reference 1800B3 (MB Sep. 14, 2012). The STA was to expire on March 14, 2013.⁸ On March 13, 2013, Licensee sought an extension of the STA.⁸ See File No. BELSTA-20130313AAR. That request remains pending.

⁹ STA Request at Exhibit 38.

¹⁰ See, e.g., *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940, 2941-2 (CIB 1999) (responsibility for complying with terms of station license “rests solely and exclusively with the licensee”) (citing *Empire Broadcasting Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

¹¹ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

¹² 47 U.S.C. § 312(f)(1).

¹³ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁴ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁵ 47 U.S.C. § 312(f)(2).

5. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.¹⁶ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.¹⁷ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁸

6. In this case, Licensee failed to timely file a license renewal application for the Station and continued Station operations for more than one month before filing the appropriate renewal application and STA request. Nevertheless, because it had previously been licensed to operate the Station, the latter transgression is not comparable to "pirate" wireless operations, which typically have been subject to forfeitures of approximately \$10,000. Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we propose a forfeiture for the full \$3,000 amount for the apparent willful failure to file a timely renewal application, and a reduced proposed forfeiture for the apparent willful and repeated unauthorized operation from the \$10,000 base amount to \$4,000.¹⁹ Thus, we propose a total forfeiture of seven thousand dollars (\$7,000).

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.²⁰ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.²¹ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."²²

8. We find that the Licensee's apparent violations of Section 73.3539 of the Rules and Section 301 of the Act do not constitute "serious violations" warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.²³ Further, based on our review of the license renewal application, we find that the Station

¹⁶ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁷ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

¹⁸ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

¹⁹ See, e.g., *Lincoln County School District*, Memorandum Opinion and Order and Notice of Apparent Liability, 29 FCC Rcd 13853 (MB 2014) (proposing the full \$3,000 forfeiture for failure to timely file a renewal application and reducing proposed forfeiture from \$10,000 to \$4,000 for nearly three weeks of unauthorized operations).

²⁰ 47 U.S.C. § 309(k).

²¹ 47 U.S.C. § 309(k)(1).

²² 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²³ For example, we do not find here that the Licensee's Station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200. See also *Center for Study and Application of Black Economic Development*,

served the public interest, convenience, and necessity during the subject license term. We will therefore grant the captioned license renewal application by separate action upon the conclusion of this forfeiture proceeding if no other issues would preclude grant of the application.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Lancaster Broadcasters, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of seven thousand dollars (\$7,000) for its apparent willful violation of Section 73.3539 of the Commission's Rules and its apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Lancaster Broadcasters, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the proposed forfeiture must be made by a check or similar instrument, wire transfer or credit card and include the Account Number and FRN referenced in the caption above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (callsign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to Penelope Dade at Penelope.Dade@fcc.gov and Maureen McCarthy at Maureen.McCarthy@fcc.gov. Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.²⁴

15. IT IS FURTHER ORDERED that the September 11, 2012, Petition for Reconsideration filed by Lancaster Broadcasters, Inc., IS GRANTED.

16. IT IS FURTHER ORDERED that the call sign WKYY(AM) IS REINSTATED.

17. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Lancaster Broadcasters, Inc., 1145 Buckeye Road, Lancaster, KY 40444, and to its counsel, John C. Trent, Esq., Putbrese Hunsaker & Trent, 200 South Church Street, Woodstock, VA 22664.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁴ See 47 C.F.R. § 1.1914.